



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-929 (Rescission Proceeding)]

Certain Beverage Brewing Capsules, Components Thereof, and Products Containing the Same; Commission Determination to Institute a Rescission Proceeding; Temporary Rescission of the Remedial Orders; Termination of the Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a rescission proceeding, to temporarily rescind a March 17, 2016 limited exclusion order and three cease-and-desist orders (“the remedial orders”), and to terminate the rescission proceeding.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the original investigation on September 9, 2014, based on a complaint filed by Adrian Rivera and Adrian Rivera Maynez Enterprises, Inc. (collectively, “ARM”). 79 FR 53445-46. The complaint alleged that several respondents, including Eko Brands, LLC (“Eko”) Evermuch Technology Co., Ltd. and Ever Much Company Ltd. (together, “Evermuch”), violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by infringing certain claims of U.S. Patent No. 8,720,320 (“the ’320 patent”). *Id.* Eko Brands and Evermuch did not respond to the complaint and notice of investigation, and were found in default. Notice (May 18, 2015). On March 17, 2016, the Commission issued a limited exclusion order prohibiting Eko and Evermuch from importing certain beverage brewing capsules, components thereof, and products containing same that infringed claims 8 or 19 of the ’320 patent, and also issued three cease-and-desist orders against Eko and the two Evermuch entities prohibiting the sale and distribution within the United States of articles that infringe claims 8 or 19. 81 FR 15742-43.

On April 2, 2015, Eko filed in district court for declaratory relief stating, *inter alia*, that Eko does not infringe certain claims of the ’320 patent and that certain claims of the ’320 patent are invalid. *Eko Brands v. Adrian Rivera Maynez Enterprises Inc. et al.*, Case No. 2:15-cv-00522, Dkt. #1 (W.D. Wash.). On June 14, 2018, the district court issued an order finding that claims 5, 8, 18, and 19 of the ’320 patent are invalid as obvious. *Id.* at Dkt. #251.

On June 28, 2018, Eko petitioned the Commission to rescind the March 17, 2016 remedial orders based on the district court’s invalidity judgment. On July 9, 2018, ARM

filed a response that did not dispute Eko's petition, but argued that any rescission be temporary pending the resolution of ARM's appeal of the district court invalidity judgment.

Having considered the petition and response, the Commission has determined to institute a rescission proceeding, and has determined that the circumstances warrant temporarily rescinding the remedial orders pending the appeal of the district court invalidity judgment. The rescission proceeding is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: July 30, 2018.

Lisa Barton,
Secretary to the Commission.

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